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ON PETITION

In re Application of
Trager, et al.
Patent No. RE 32969
Application No. 07/116,579
Filed: August 24, 1987
Attorney Docket No. RE8530-20092

This is a decision on the petition under 37 CFR 1.378(c), filed September 7, 1999, to accept an unintentionally delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

If reconsideration of this decision is desired, a petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. No extension of this two-month time limit can be granted under 37 CFR 1.136(a) or (b). Any such petition for reconsideration must be accompanied by the petition fee of \$130.00 as set forth in 37 CFR 1.17(h).

The patent issued September 10, 1985. Accordingly, the second maintenance fee due could have been paid during the period from September 10, 1992 through March 10, 1993, or with a surcharge during the period from March 11, 1993 through September 10, 1993. This patent expired on September 11, 1993. A petition under 37 CFR 1.378(c) must be filed within twenty-four months after the six month grace period specified in 35 USC 41(b). The six month grace period for the instant patent expired on September 11, 1993. Accordingly, an unintentional petition to reinstate the instant patent must have been submitted no later than September 10, 1993. Since the petition was not timely filed, the instant patent will not be reinstated under the unintentional provisions of 37 CFR 1.378(c).

Although the instant petition is for the acceptance of the unintentionally delayed payment of the 11 1/2 year maintenance fee, PTO records do not indicate receipt of the second maintenance fee for this patent. Therefore, the

patent expired on September 11, 1993.

Petitioner may wish to pursue reinstatement of the patent under the unavoidable provisions of 37 CFR 1.378(b). A petition to accept the delayed payment of a maintenance fee under 35 USC 41(c) and 37 CFR 1.378(b) must be accompanied by (1) an adequate, verified showing that the delay was unavoidable, since reasonable care was taken to insure that the maintenance fee would be paid timely and that the petition was filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent, (2) payment of the appropriate maintenance fee, unless previously submitted, and (3) payment of the surcharge set forth in 37 CFR 1.20(i)(1).

Accordingly, since the patent will not be reinstated, petitioner may request a refund of the \$1,455.00 maintenance fee and the \$1,640.00 surcharge by writing to the Office of Finance, Refund Section. A copy of this decision should accompany petitioner's request.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

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Telephone inquiries concerning this matter may be directed to Petitions Attorney Christina T. Tartera at (703) 306-5589.



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